

The new ISO 37301 Standard: advantages and relevance for business compliance

By Board Resolution N° 010-2021-INACAL/DN, published in the last June 16 edition of the Legal Standards Newsletter of El Peruano, the National Quality Institute has adopted the Peruvian Technical Standard NTP-ISO 37301:2021: Compliance Management Systems, which replaces NTP-ISO 19600:2017. Unlike the latter, the recently adopted technical standard is certifiable, thus exceeding one of the main observations made on the previous NTP-ISO 19600:2017.

At the local level, the Regulation of the Corporate Criminal Responsibility Law (Law N° 30424) establishes that the technical report issued by the Superintendency of Securities Market (SMV) in the framework of a criminal investigation, regarding the effectiveness of the Crime Prevention Model, shall take into consideration *"the existence of the certifications related to risk management system, compliance management or anti-bribery management system, which the legal entity has obtained"*. Even though these certifications are not binding

for the SMV or the Public Prosecutor's Office, the positive influence they have when assessing the solvency and robustness of the Criminal Compliance Program may not be denied. In fact, when referring to the implementation of criminal risk prevention and management systems within business organizations, the Regulation of Law N° 30424 expressly refers to international technical standards on Compliance, so the relevance of NTP-ISO 37301:2021 in the task of designing and implementing Crime Prevention Models is unquestionable.

This new standard, which unlike ISO 37001 is not focused on corruption risks, establishes the requirements, objectives and activities necessary to structure and implement a certifiable system that allows compliance with technical and legal standards, including not only legal or regulatory requirements, but also industry standards, ethical standards, best practices, among others. Its main elements include:

- (i) Adaptability and applicability.** The requirements and recommended practices in ISO 37301 are intended to be a guide applicable to any type of organization, which must consider its size, nature and complexity of the activities it performs, as well as its compliance objectives and the maturity of the compliance management system implemented.
 - (ii) Integration with other management systems.** Although the compliance management system may be implemented independently, its value lies in its comprehensive implementation with other management systems such as anti-bribery, information security, environmental, among others. In this way, the organization may aspire to implement a complete compliance system, which includes other systems previously adopted by the organization or that it intends to implement in the future (for example, the anti-corruption management system).
 - (iii) Leadership.** For a compliance system to be effective, there must be a commitment from the organization's governing body and senior management. The new ISO standard emphasizes the role of both bodies within the organization, assigning them a leading role in the development of an effective system through their direct and continuous involvement, as well as a demonstrable commitment to the compliance management system.
 - (iv) Compliance culture.** The new ISO standard expressly states that one of its objectives is to become a tool for the dissemination of a "positive compliance culture" within business organizations, which in practice involves not only focusing on establishing controls as obstacles to the commission of infractions by its members, but also prioritizing the execution of concrete actions to promote, encourage and consolidate regulatory compliance and integrity within the organization.
 - (v) Risk management.** The new ISO standard reinforces the importance of managing the risks to which the organization is exposed. To this end, it establishes that in order to have an effective compliance system, the organization must identify, analyze and assess the compliance risks to which it is exposed in order to implement the controls and procedures that are suitable for managing them.
- In short, the new ISO standard is a useful tool with a comprehensive approach that companies may use either to design and implement a compliance system or to strengthen the one they already have in place, allowing them to certify compliance programs that manage different types of risks.

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After 17 years of its promulgation, on June 15, 2021, the Criminal Procedure Code (NCP) entered into force in the Judicial District of Lima Centro, as scheduled by Supreme Decree N° 005-2021-JUS, after successive extensions of its entry into force. For the purposes of the adaptation to the NCP of the investigations and proceedings in progress under the former Code of Criminal Procedures, the beginning of the judicial investigation must be considered as a procedural milestone, that is, those cases that as of June 15, 2021, were without formalization of complaint or without judicial qualification of a formalized tax complaint, must comply with the rules of the NCP.

Source: El Peruano



In the framework of the 37th session of the High-Level Anti-Corruption Commission (CAN), held on June 15 virtually, it was reported that, to date, an overall compliance level of 70% is recorded with respect to the goals set in the three strategic axes of preventive capacity, risk management and sanctioning capacity in matters of corruption.

Source: Government of Peru



On June 23, 2021, Law N° 31227 was adopted, whereby the competence to receive and exercise control, supervision and sanction regarding the affidavit of interests of authorities, servants and candidates for public office was transferred to the Office of the Comptroller General of the Republic, repealing Emergency Decree N° 20-2019.

Source: El Peruano



The Americas Society/Council of the Americas (AS/COA) and Control Risks have published the Anti-Corruption Capacity Index (CCC) 2021, a tool that evaluates and ranks countries based on their capacity to detect, punish and prevent corruption, placing Peru in 4th place out of 15 with a score of 5.66.

Source: Americas Society/Council of the Americas (AS/COA)



Transparency International published the Global Corruption Barometer (GCB) of the European Union, which shows that 3 out of 10 people pay a bribe or use a personal connection to access public services. This is equivalent to more than 106 million people in the 27 countries surveyed.

Source: Transparency International




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On June 25, 2021, the Financial Action Task Force (FATF) released the results of the plenary session held on June 21, stating to have completed a second review of the FATF Global Network's progress in implementing the standards on virtual assets and virtual asset service providers (VASPs) and to have completed a report with concrete actions to improve asset recovery results, among others.

Source: Financial Action Task Force (FATF) 


Through Executive Decree N° 4, Standards of Ethical Governmental Behavior applicable to all personnel of the executive function in Ecuador were adopted, aimed at guiding the exercise of the public function, in order to promote a transparent and efficient public administration at the service of all citizens.

Source: Government of the Republic of Ecuador 

The Vice President of the United States, Kamala Harris, confirmed the creation of a regional anti-corruption force, which shall be supported by the Departments of State, Justice and Treasury and shall support prosecutors in Central America.

Source: Forbes Central America 

On June 11, 2021, the Superintendency of Companies of Colombia issued Foreign Circular N° 100-000008, through which the Policy for the Supervision of the Self-Control Regime and Integral Risk Management of Money Laundering and Financing of Terrorism was enacted, aimed at preventing money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction.

Source: Superintendency of Companies of Colombia 

On June 8, 2021, the Australian Securities and Investments Commission ("ASIC") filed criminal charges against an audit firm and its directors for failure to comply with auditing standards under sections 989CA (1) and (2) of the Corporations Act.

Source: Australian Securities and Investments Commission (ASIC) 

Resources

The Financial Action Task Force of Latin America (GAFILAT) makes available an "Inventory of Open Sources" and an "Inventory of Regional Networks on Asset Recovery" as useful tools for the project for Strengthening International Cooperation through the GAFILAT Asset Recovery Network (RRAG).

Source: Financial Action Task Force of Latin America (GAFILAT)



On June 28, 2022, the Financial Action Task Force (FATF) published a report on environmental crime and its link to money laundering, highlighting the tools available to combat these activities, through institutional cooperation.

Source: Financial Action Task Force (FATF)



The European Anti-Fraud Office (OLAF), the institution in charge of detecting, investigating and stopping fraud related to European Union funds, has published its annual report for 2020, having carried out 230 investigations and issued 375 recommendations to the competent national and European Union authorities.

Source: European Anti-Fraud Office (OLAF)



On June 22, 2021, the United Kingdom's HM Revenue & Customs ("HM Revenue & Customs") issued guidelines to assist real estate agencies or companies with their obligations to prevent money laundering and terrorist financing.

Source: HM Revenue & Customs



On June 17, 2021, the Australian Transaction Reporting and Analysis Centre ("AUSTRAC") issued guidelines on the implementation of the amendments to the Anti-Money Laundering and Terrorist Financing Act of 2006 which came into force on June 17.

Source: Australian Transaction Reporting and Analysis Centre ("AUSTRAC").



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